MONTANA LEGISLATIVE HISTORY

Chapter 171 1971

Bill H _____ S 42 Original bill & history NOC

H. Committee on Public Health + Welfare

Hearing Date(s) _____ ___C

_____ ___C

2/18 ✓C

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Date Out 2/18 ✓C

S. Committee on Public Health

Hearing Date(s) _____ ___C

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Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

January 15, 1971

A meeting of the Committee on PUBLIC HEALTH, WELFARE AND SAFETY was held following afternoon adjournment. The meeting was called to order by the Chairman, and there was a quorum present.

SENATE BILL #47. Senator Groff, one of the sponsors of the bill, explained the advantages, and also called upon Mr. Ted Carkulis and Mr. Jack Carlson of the Department of Public Welfare. Various members of the committee, including Senators Cotton, Stephens, Vainio and Dr. Bennett, asked questions which were answered by the representatives of the Welfare Department.

After discussion by members, motion was made by Dr. Bennett that SB #47 DO PASS. This was seconded by Senator Bollinger and the motion carried.

SENATE BILL #42. Senator Mackay, who introduced the bill, gave a summary, and Mr. Vernon Sloulin of the State Board of Health gave a detailed explanation, stressing the maintaining of uniformity. He stated that already 42 states have model food and drug acts. After a question and answer period, Senator Bollinger moved that SB #42 DO PASS. This was seconded by Senator Mitchell and the motion carried.

Senator Bollinger moved for an amendment to SENATE BILL #2[illegible]. After much discussion, it was decided that no further action would be taken at this time.

Senator Bollinger presented an amendment to SENATE BILL #37, changing the word "shall" on line 22 to the word "may". Motion was made by Senator Hibbard, seconded by Senator Deschamps, that SB #37 DO PASS AS AMENDED. Motion carried.

SENATE BILL NO. 92. Dr. Bennett, one of the sponsors, explained that this bill was proposed by the Montana Medical Association. He explained the merits of the bill, and answered questions asked by various members of the committee. After much discussion, motion was made by Senator Cotton, Seconded by Senator Stephens, that SB #92 DO PASS, and motion carried.

There being no further business, the meeting adjourned.

Elmer Flynn

Elmer Flynn, Chairman

February 18, 1971

PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE PROCEEDINGS:

A meeting of the Public Health, Welfare and Safety Committee was held on Thursday, February 18, 1971, at 8:00 a.m. in Room 428A with Chairman Keller presiding. All members were present but Brown, Marbut, and Olson who were absent.

SENATE BILL #304 -- SPONSOR: Senator Vainio spoke on behalf of his bill. He introduced Lee Mohunka, Department of Public Welfare, Division of Visual Services, to explain the bill. They felt it was the responsibility of a program like theirs to work with people with visual problems. They explained the way in which they worked with people who are opthalomogists. One problem is that there is a large part of Montana where there are no opthalomogists. Dr. Tom Rasmussen testified in behalf of the bill. The Senator said this bill has the approval of the Montana Optometric Association. Mr. Heglund spoke in behalf of the bill. There were no opponents.

SENATE BILL #42 -- SPONSOR: Senator Mackay explained the background of his bill.

PROPONENTS:

Vern Sloulin, State Department of Health, explained that this is a bill which relates to fair packaging and labeling. This would try to get uniformity between the state and federal government regulations.

SENATE BILL #202 -- SPONSOR: Senate Sheehy said this bill is to enable a psychiatrist to render temporary emergency care to a legal minor without having to get consent or a court order.

PROPONENTS:

Dr. Harr, Billings, spoke in behalf of the bill. He said it is a rarely used situation, but necessary that court order not have to be secured because of the emergency nature of some situations.

All witnesses were excused.

A motion was made that SENATE BILL #202 BE CONCURRED IN. Motion seconded and carried. It was moved, seconded and carried that it have an amendment to strike the effective date from the title. Dr. Norman will carry the bill on the floor.

It was moved that SENATE BILL #42 BE CONCURRED IN. Seconded and carried. Zody will carry this on the floor.

A motion was made that SENATE BILL #304 BE CONCURRED IN. Seconded and carried. Lee will carry this on the floor.

find necessary under the provisions of section 84-713, R.C.M. 1947.

State hospital for insane.

(b) For the Montana state hospital for the insane bond interest and redemption fund created under Referendum Measure No. 57, one-half (½) of one (1) mill or so much thereof as the state board of equalization may find necessary, under the provisions of Referendum Measure No. 57.

State training school.

(c) For the Montana state training school bond interest and redemption fund created under Referendum Measure No. 58, one-half (½) of one (1) mill or so much thereof as the state board of equalization may find necessary, under provisions of Referendum Measure No. 58.

University millage fund.

(d) For the university millage fund, to provide funds for the support of the Montana university system, as provided in Referendum Measure No. 65 and passed by vote of the people at the general election held November 5, 1968, six (6) mills, or so much thereof as may be necessary to raise the amount appropriated by the legislative assembly from the university millage fund for support of the units of the Montana university system.

Severability clause.

Section 3. If any part of this act shall be declared invalid or unconstitutional, it shall not affect the validity of any other part of this act.

Effective immediately.

Section 4. This act shall be in full force and effect from and after its passage and approval.

Approved March 3, 1971

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## CHAPTER NO. 171

An Act to Revise the Montana Food, Drug, and Cosmetic Act to Include Fair Packaging and Labeling: Amending Sections 27-702, 27-703 and 27-721, R.C.M., 1947.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 27-702, R.C.M., 1947 is amended to read as follows:

Definitions.

"27-702. **Definition of terms.** For the purpose of this act—





(a) The term "state board" means the Montana state board of health. "State board."

(b) The term "department" means the Montana state department of health. "Department."

(c) The term "person" includes individual, partnership, corporation and association. "Person."

(d) The term "food" means "Food."

(1) articles used for food or drink for man or other animals,

(2) chewing gum, and

(3) articles used for components of any such article.

(e) The term "drug" means "Drug."

(1) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and

(2) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and

(3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and

(4) articles intended for use as a component of any article specified in clause (1), (2) or (3); but does not include devices or their components, parts or accessories.

(f) The term "device" (except when used in paragraph (1) of this section and in sections 27-703 (j), 27-711 (f), 27-715 (c) and (o) and 27-719 (c) means instruments, apparatus and contrivances, including their components, parts and accessories, intended "Device."

(1) for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; or

(2) to affect the structure or any function of the body of man or other animals.

(g) The term "cosmetic" means "Cosmetic."

(1) articles intended to be rubbed, poured, sprinkled,

or sprayed on, introduced into or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness or altering the appearance, and

(2) articles intended for use as a component of any such articles, except that such term shall not include soap.

"Official compendium." (h) The term "official compendium" means the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them.

"Label." (i) The term "label" means a display of written, printed or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this act that any word, statement or other information appearing on the label shall not be considered to be complied with unless such word, statement or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

"Immediate container." (j) The term "immediate container" does not include package liners.

"Labeling." (k) The term "labeling" means all labels and other written, printed or graphic matter

(1) upon an article or any of its containers or wrappers, or

(2) accompanying such article.

Determination of misleading labeling or advertisement. (l) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the





labeling or advertisement thereof or under such conditions of use as are customary or usual.

"Advertisement" defined. (m) The term "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices or cosmetics.

Representation of a drug. (n) The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body.

"New drug" defined. (o) The term "new drug" means

(1) any drug the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended or suggested in the labeling thereof; or

(2) any drug the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions.

Application of term "contaminated with filth." (p) The term "contaminated with filth" applies to any food, drug, device or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

Selling defined. (q) The provisions of this act regarding the selling of food, drugs, devices or cosmetics, shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession and holding of any such article for sale; and the sale, dispensing and giving of any such article, and the supplying or applying of any such articles in the conduct of any food, drug or cosmetic establishment.

"Pesticide chemical." (r) The term "pesticide chemical" means any substance which, alone, in chemical combination, or in

formulation with one or more other substances is an "economic poison" within the meaning of the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C., secs. 135-135k as now enacted or as hereafter amended), and which is used in the production, storage or transportation of raw agricultural commodities.

"Raw agricultural commodity."

(s) The term "raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored or otherwise treated in their unpeeled natural form prior to marketing.

"Food additive."

(t) The term "food additive" means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food, (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting or holding food; and including any source of radiation intended for any such use), if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use; except that such term does not include:

(1) a pesticide chemical in or on a raw agricultural commodity; or

(2) a pesticide chemical to the extent that it is intended for use or is used in the production, storage or transportation of any raw agricultural commodity; or

(3) a color additive; or

(4) any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the Federal Act; the Poultry Products Inspection Act (21 U.S.C. 451 and the following) or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71 and the following).

(u) (Color and color additive)





"Color additive."

(1) The term "color additive" means a material which —

(A) is a dye, pigment or other substance made by a process of synthesis or similar artifice, or extracted, isolated or otherwise derived, with or without intermediate or final change of identity from a vegetable, animal, mineral or other source, or

(B) when added or applied to a food, drug or cosmetic, or to the human body or any part thereof, is capable (alone or through reaction with other substance) of imparting color thereto; except that such term does not include any material which has been or hereafter is exempted under the Federal Act.

"Color."

(2) The term "color" includes black, white and intermediate grays.

(3) Nothing in clause (1) of this subsection (u) shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding or otherwise affecting, directly or indirectly the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

"Federal Act."

(v) The term "Federal Act" means the Federal Food, Drug and Cosmetic Act, as amended (Title 21 U.S.C. 301 et seq.).

"Counterfeit drug."

*(w) The term "counterfeit drug" means a drug which, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint, or device, or any likeness thereof, of a drug manufacturer, processor, packer, or distributor other than the person or persons who in fact manufactured, processed, packed or distributed such drug and which thereby falsely purports or is represented to be the product of, or to have been packed or distributed by, such other drug manufacturer, processor, packer, or distributor.*

"Consumer commodity."

*(x) The term "consumer commodity", except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic as those terms are defined by this act or by the Federal Act and regulations pursuant thereto. Such term does not include —*

*(1) any tobacco or tobacco product;*

*(2) any commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the Act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151-157), commonly known as the Virus-Serum Toxin Act;*

*(3) any drug subject to the provisions of section 17 (a) (B) or 16 (k) of this act, or section 503 (b) (1) or 506 of the Federal Act;*

*(4) any beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C., et seq.); or*

*(5) any commodity subject to the provisions of the Federal Seed Act (7 U.S.C. 1551-1610).*

"Principal display panel."

*(y) The term "principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.*

"Package."

*(z) The term "package" means any container or wrapping in which any consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers, but does not include —*

Exceptions.

*(1) shipping containers or wrappings used solely for the transportation of any consumer commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof;*

*(2) shipping containers or outer wrappings used by retailers to ship or deliver any commodity to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity."*

Amending clause.

Section 2. Section 27-703, R.C.M., 1947, is amended to read as follows:

Prohibited acts enumerated.

"27-703. **Prohibited acts enumerated.** The following acts and the causing thereof within the state of Montana are hereby prohibited:

(a) The manufacture, sale or delivery, holding or offering for sale of any food, drug, device or cosmetic that is adulterated or misbranded.





(b) The adulteration or misbranding of any food, drug, device or cosmetic.

(c) The receipt in commerce of any food, drug, device or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

(d) The sale, delivery for sale, holding for sale or offering for sale of any article in violation of section 27-712 or 27-717.

(e) The dissemination of any false advertisement.

(f) The refusal to permit entry or inspection or to permit the taking of a sample, as authorized by section 27-722.

(g) The giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same affect (effect) signed by, and containing the name and address of the person residing in the state of Montana from whom he received in good faith the food, drug, device or cosmetic.

(h) The removal or disposal of a detained or embargoed article in violation of section 27-706.

(i) The alteration, mutilation, destruction, obliteration or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device or cosmetic, if such act is done while such article is held for sale and results in such article being adulterated or misbranded.

(j) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label or other identification device authorized or required by regulations promulgated under the provisions of this act or of the Federal Act.

(k) The using, on the labeling of any drug or in any advertisement relating to such drug, of any representation or suggestion that an application with respect to such drug is effective under section 27-717, or that such drug complies with the provisions of such section.

(l) In the case of a prescription drug distributed or offered for sale in this state, the failure of the manu-

facturer, packer or distributor thereof to maintain for transmittal, or to transmit, to any practitioner licensed by applicable law to administer such drug who makes written request for information as to such drug, true and correct copies of all printed matter which is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved under the Federal Act. Nothing in this paragraph shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this act.

Counterfeiting trade-marks.

(m) (Counterfeiting trade-marks)

(1) Placing or causing to be placed upon any drug or device or container thereof, with intent to defraud, the trade name or other identifying mark, or imprint of another or any likeness of any of the foregoing; or

(2) Selling, dispensing, disposing of or causing to be sold, dispensed or disposed of or concealing or keeping in possession, control or custody, with intent to sell, dispense or dispose of, any drug, device or any container thereof, with knowledge that the trade name or other identifying mark or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by subsection (1) hereof; or

(3) Making, selling, disposing of or causing to be made, sold or disposed of or keeping in possession, control or custody, or concealing, with intent to defraud, any punch, die, plate or other thing designed to print, imprint, or reproduce that trade name or other identifying mark or imprint of another or any likeness of any of the foregoing upon any drug, device or container thereof.

(n) Dispensing or causing to be dispensed a different drug or brand of drug in place of the drug or brand of drug ordered or prescribed without the express permission in each case of the person ordering or prescribing.

(o) The using by any person to his own advantage, or revealing, other than to the state board, or officers or employees of the department, or to the courts when relevant in any judicial proceeding under this act, any information acquired under authority of this act concerning any method or process which as a trade secret is entitled to protection.





*(p) The distribution in commerce of a consumer commodity, as defined in this act, if such commodity is contained in a package, or if there is affixed to that commodity a label, which does not conform to the provisions of this act and of regulations promulgated under authority of this act; provided, however, that this prohibition shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons*

*(1) are engaged in the packaging or labeling of such commodities, or*

*(2) prescribe or specify by any means the manner in which such commodities are packaged or labeled.*

*(q) The labeling or packaging of a food, drug, or cosmetic which fails to conform with the requirements of this act."*

Amending clause.

Section 3. Section 27-721, R.C.M., 1947, is amended to read as follows:

"27-721. **Procedure for adopting, amending or repealing regulations — hearings.**

Board has authority to regulate.

(a) The authority to promulgate regulations for the efficient enforcement of this act is hereby vested in the state board. The state board is hereby authorized to adopt by reference the regulations promulgated by the Food and Drug Administration under the Federal Act *and the Fair Packaging and Labeling Act (15 U.S.C. 1451, et seq.).*

Conduct of hearings.

(b) Hearings authorized or required by this act shall be conducted by the state board or such officer, agent or employee as the state board may designate for the purpose.

Notices.

Effective date.

Amendment or repeal.

(c) Before promulgating any regulations contemplated by section 27-709; 27-711 (j); 27-712; 27-715 (d), (f), (g), (h), (m), and (p); 27-716 (c); or 27-720 (b), the state board shall give appropriate notice of the proposal and of the time and place for a hearing. The regulation so promulgated shall become effective on a date fixed by the state board (which date shall not be prior to ten (10) days after its promulgation). Such regulation may be amended or repealed in the same manner as is provided for its adoption, except that in the case of a regulation amending or repealing any such regulation the state board, to such an extent as it deems necessary in order to prevent undue

Waiver. Exception.

hardship, may disregard the foregoing provisions regarding notice, hearing or effective date. No hearing will be required for promulgation by reference of those regulations promulgated under the Federal Act *and the Fair Packaging and Labeling Act (15 U.S.C. 1451, et seq.).*"

Approved March 3, 1971

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## CHAPTER NO. 172

An Act to Amend Section 94-35-249, R.C.M., 1947, to Prohibit the Possession of Any Key or Device Specifically Designed to Open or Break Any Parking Meter, Coin Telephone, or Other Vending Machines Dispensing Goods or Services and to Increase the Penalties Provided by Section 94-35-249, R.C.M., 1947.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 94-35-249, R.C.M., 1947, is amended to read as follows:

Use of slugs in coin operated equipment forbidden.

"94-35-249. **Vending or coin-operated machines — operation with counterfeit slugs, etc., forbidden.** Any person who, by means of any token, slug, false or counterfeited coin, or by any other means, method, trick or device whatsoever not lawfully authorized by the owner, lessee, or licensee of any lawful vending machine, coin-box telephone or other receptacle designed to receive or be operated by lawful coin of the United States of America in furtherance of or connection with the sale, use or enjoyment of property or service, knowingly shall operate or cause to be operated, or shall attempt to operate or attempt to cause to be operated, any lawful vending machine, coin-box telephone or other receptacle designed to receive or be operated by lawful coin of the United States of America, or whoever shall take, obtain, accept or receive, from or by means of any such machine, coin-box telephone or other receptacle, any article of value of service or the use or enjoyment of any telephone, telegraph or other facility or service, without depositing in, delivering to and payment into such machine, coin-box telephone or receptacle the amount of lawful coin of the United States of America required therefor by the owner, lessee or licensee of such machine, coin-box telephone or

Deposit of lawful coin required.





other receptacle, *and any person who possesses, with the intent to commit larceny, a key or device specifically designed to open or break any parking meter, coin telephone, or other vending machines dispensing goods or services,* shall be fined not more than two hundred dollars ($200.00), or imprisoned not more than sixty (60) days, or both."

Use of key or device prohibited.

Penalties.

Approved March 3, 1971

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## CHAPTER NO. 173

An Act to Amend Section 95-1703, R.C.M., 1947, Providing for Dismissal of Actions.

*Be it enacted by the Legislative Assembly of the State of Montana:*

Amending clause.

Section 1. Section 95-1703, R.C.M., 1947, is amended to read as follows:

"95-1703. **Dismissal on motion of court or application of attorney prosecuting.** *(1)* The court may, either on its own motion or upon the application of the attorney prosecuting, and in furtherance of justice, order an action, complaint, information, or indictment to be dismissed. The reasons of the dismissal must be set forth in an order entered upon the minutes.

Court may order dismissal.

*(2) The court, unless good cause to the contrary is shown, must order the prosecution to be dismissed in the following cases:*

Court must order dismissal.

*If a defendant, after entry of plea upon a complaint, information, or indictment charging a misdemeanor, whose trial has not been postponed upon his application, is not brought to trial within six months.*

Not brought to trail within 6 months.

*(3) An order for the dismissal of an action, as provided in this chapter, is a bar to any other prosecution for the same offense if it is a misdemeanor, but it is not a bar if the offense is a felony.*"

Bar if misdemeanor.

Approved March 3, 1971

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## CHAPTER NO. 174

An Act to Amend Section 92-701, R.C.M., 1947, to Raise Compensation Rates During the Period of Total Temporary Disability.